

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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PEDRO GARCIA, : ORDER ADOPTING REPORT  
Plaintiff, : AND RECOMMENDATION  
: 10-CV-748 (JFB) (WDW)  
- against - :  
:  
MID-ISLAND WHOLESALE FRUIT & :  
PRODUCE, INC., ET AL. :  
:  
Defendants. :  
:  
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ED  
IN CHIEF'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ DEC 22 2011 ★

LONG ISLAND OFFICE

JOSEPH F. BIANCO, District Judge:

On February 19, 2010, plaintiff filed the complaint in this action against defendants Mid-Island Wholesale Fruit & Produce Inc., Howard Greissman, and David Fleschner (collectively, "defendants"). Defendants answered the complaint on April 9, 2010. Defense counsel filed a motion to withdraw as counsel on January 24, 2011, which Magistrate Judge Wall granted on March 15, 2011. At a conference held on August 16, 2011, plaintiff's counsel reported problems with contacting the plaintiff and asked that the case be administratively closed.

On August 18, 2011, Magistrate Judge Wall issued a Report and Recommendation (the "R&R") recommending that the Court administratively close the case for 45 days to give plaintiff's counsel a further opportunity to contact Mr. Garcia. (*See R&R, at 1.*) The R&R further instructed that any objections to the R&R be submitted within fourteen (14) days. (*See R&R, at 1.*) No objections have been filed to date, although the date for filing such objections has expired.

A district judge may accept, reject, or modify, in whole or in part, the findings and

recommendations of the Magistrate Judge. *See DeLuca v. Lord*, 858 F. Supp. 1330, 1345 (S.D.N.Y. 1994); *Walker v. Hood*, 679 F. Supp. 372, 374 (S.D.N.Y. 1988). As to those portions of a report to which no “specific written objections” are made, the Court may accept the findings contained therein, as long as the factual and legal bases supporting the findings are not clearly erroneous. *See Fed. R. Civ. P. 72(b); Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Greene v. WCI Holdings Corp.*, 956 F. Supp. 509, 513 (S.D.N.Y. 1997).

Having conducted a review of the full record and the applicable law, and having reviewed the R&R for clear error, the Court adopts the findings and recommendations contained in the R&R in their entirety.<sup>1</sup> The case shall be administratively closed for 45 days from the date of this Order to give plaintiff’s counsel a further opportunity to contact Mr. Garcia. At the end of that time period, he must inform the court in writing of his efforts to contact Mr. Garcia, and if those efforts have not been successful, the Court will dismiss the case for failure to prosecute.

IT IS FURTHER ORDERED that plaintiff’s counsel shall serve a copy of this Order on the three defendants, and file proof of service with the court.

JOSEPH F. BIANCO  
/s/ HON. JOSEPH F. BIANCO  
United States District Judge  
~~JOSEPH F. BIANCO~~  
UNITED STATES DISTRICT JUDGE

Dated: December 27, 2011  
Central Islip, NY

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<sup>1</sup> Even under a de novo standard of review, the Court would adopt the R&R in its entirety for the same reasons contained in the R&R.